① 6-8-04

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

WRIT PETITION NO. 1187 OF 2004

PETITIONER : ANUPRAM PATEL, S/O LATE SHRI GANDHIRAM PATEL, AGED ABOUT 47 YEARS, CONDUCTOR, R/O CIVIL LINES, BALODABAZAR, DISTRICT RAIPUR, (C.G.).

VERSUS

RESPONDENTS : 1. (CHHATTISGARH STATE ROAD TRANSPORT CORPORATION, RAIPUR), NOW CHHATTISGARH INFRASTRUCTURE DEVELOPMENT CORPORATION, THROUGH : THE DIVISIONAL MANAGER, (TRANSPORT SECTION), C.I.D.C., RAIPUR, (C.G.).

P. R. No. 1168/04
Presented by Shri Vaibhav
dated 21-4-04

2. THE INDUSTRIAL COURT, RAIPUR,THROUGH: THE REGISTRAR. RAIPUR, (C.G.).

3. THE LABOUR COURT, RAIPUR, (C.G.).

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.

AFR

(54)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1187 of 2004

Petitioner — Anupram Patel

Versus

Respondents — Chhattisgarh State Road Transport Corporation, Raipur & others.

Post for order on 19th April, 2006.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1187 of 2004

Petitioner — Anupram Patel

Versus

Respondents — Chhattisgarh State Road Transport Corporation, Raipur & others.

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri Rajesh Pandey, counsel for the Petitioner.

Shri Pradeep Saxena, counsel for Respondent No.1.

O R D E R

(April, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner has filed this petition under Article 226/227 of the Constitution of India challenging the order dated 3.3.2004 (Annexure P/1) passed by the Industrial Court, Chhattisgarh, Raipur in Appeal No. 448/M.P.I.R./91.

2. The facts in nutshell, necessary for disposal of this petition, are that the petitioner/employee (Anupram Patel) had filed an application before the Labour Court Raipur under Section 31(3) read with Section 61 of the Madhya Pradesh Industrial Relations Act 1960 (for short 'the Act 1960'), submitting that he was working on the post of Conductor in the Madhya Pradesh State Road Transport Corporation/Respondent No.1/employer from the year 1984. His services were terminated vide order dated 7.12.1990. Before terminating his services departmental enquiry was conducted but he was not given proper opportunity to defend his case in accordance with the principles of natural justice. He

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was not afforded the opportunity to get the independent witness examined. No evidence was produced with regard to the factual position of the incident, and the imposed punishment of removal from service is excessive and harsh.

3. The charge against the petitioner was that on 4.9.1990 vehicle No 6848 was inspected by the flying squad of head quarter Bhopal at 10.20 a.m. on the way of Kharara to Baloda Bazar. At that time out of 44 passengers, 22 passengers were found sitting in the bus without ticket. The fare charges were already obtained from them by the petitioner, who was on duty in the bus as Conductor. The Inspectors of the flying squad executed the inspection note and prepared panchnama.

4. The respondent filed written statement before the Labour Court in which it was submitted that full opportunity was afforded to the petitioner to defend his case, he deliberately absented himself from the enquiry and the ex-parte proceeding was conducted against the petitioner and in the departmental enquiry he was found guilty of the charge of misconduct

5. The Labour Court vide order dated 24.7.1991(Annexure P/3) passed in Case No. 6/M.P.I.R./91 came to the conclusion that no independent witness was examined, nor the collection book of the vehicle No. 7808 was produced, wherefrom some of the passengers were shifted to the vehicle No. 6848, which was inspected by the inspectors of the flying squad and deficiency of not issuing tickets was found. In view of that the Labour Court found that the findings were perverse being without any evidence. Accordingly the direction to reinstate the petitioner in service without back wages was passed.

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6. The respondent preferred an appeal under Section 65 of the Act, 1960 before the Industrial Court, Raipur, challenging the order dated 24.7.1991. The appellate Court allowed the appeal vide order dated 3.3.2004 passed in Appeal No. 448/M.P.I.R./91 and set aside the order dated 24.7.1991 passed by the Labour Court.

7. The petitioner has preferred this petition challenging the order dated 24.7.1991 passed by the Industrial Court.

8. I have heard learned counsel for the parties and perused the pleadings and records appended to the petition.

9. The Industrial Court in appeal considered all the facts and came to the conclusion that 22 passengers traveling in the vehicle under consideration were without tickets. The petitioner has not attempted to prove as-to why 22 passengers were travelling without tickets. Even if after inspection by the Inspectors, the petitioner or any other Conductor of vehicle No. 7808 had deposited the entire amount of fare of 44 passengers travelling in the bus, the petitioner could not be exonerated from the misconduct by not issuing tickets after collecting bus fare from the travelling passengers. The petitioner has no explanation to the effect that why all the 22 passengers were travelling without proper tickets. The Industrial Court has held that the burden of proof is on the delinquent employee, not on the passengers. During the inspection, a proper panchnama was prepared in presence of the independent witnesses and there is no question of doubting the authenticity of the Panchnama and the inspection report.

10. The submission of the petitioner that the Industrial Court had passed the order in the absence of the petitioner employee does

not cause any prejudice to the case of the petitioner. Accordingly, this contention of learned counsel for the petitioner is unsustainable. The scope of review is limited and the Industrial Court has rightly dismissed the review vide order dated 7.4.2004 (Annexure P/2) on their being no ground for review of the earlier order dated 3.3.2004.

11. For the reasons stated above, no procedural error or irregularity is found in the impugned order passed by the Industrial Court and the findings recorded by the Industrial Court is based on sufficient evidence. Hence, the petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur